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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	
	Case No. 09-40795
FORUM HEALTH, et al.,[1]	Jointly Administered
Debtors.	Chapter 11
	Judge Kay Woods

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' APPLICATION FOR ORDER UNDER 11 U.S.C. §§ 105, 327(A) AND 328(A) AUTHORIZING EMPLOYMENT AND RETENTION OF HOULIHAN LOKEY HOWARD & ZUKIN CAPITAL, INC. AS INVESTMENT BANKER TO THE DEBTORS, NUNC PRO TUNC TO JULY 13, 2009

The Official Committee of Unsecured Creditors appointed in the above-captioned cases (the "Committee"), by and through its undersigned counsel, hereby files this objection (the "Objection")[2] to the application (the "Application")[3] of the above-captioned debtors (collectively, the "Debtors") for an order under 11 U.S.C. §§ 105, 327(a) and 328(a) authorizing

[1] The Debtors include: Forum Health (31-1560189), Forum Health Diagnostics Co. (34-1773672), Forum Health Enterprises Co. (34-1368151), Forum Health Outreach Laboratories, Inc. (34-1437294), Forum Health Ventures Co. (34-1489491), Forum Health Pharmacy Services Co. (34-1754092), Forum Health Rehabilitative Services Co. (31-1581767), Forum Health Services Co. (34-1461044), Western Reserve Care System (34-1454933), Western Reserve Health Foundation (34-1461047), Dacas Nursing Support Systems, Inc. (34-1482591), Dacas Nursing Systems, Inc. (34-1456983), Beeghly Oaks (31-1196072), PrideCare, Inc. (34-1490425), Trumbull Memorial Hospital (34-1461049), Trumbull Memorial Hospital Foundation (34-1195190), Comprehensive Psychiatry Specialists, Inc. (34-1697739), and Visiting Nurse Association and Hospice of Northeast Ohio (34-0714388).
[2] The Debtors extended the Committee's deadline to object to the Application to August 6, 2009.
[3] Capitalized terms not defined herein shall have the meaning as defined in the Application.

the employment and retention of Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan") as investment banker to the Debtors, *nunc pro tunc* to July 13, 2009. In support of this Objection, the Committee respectfully represents as follows:

OBJECTION

1. A party seeking to employ a professional under section 328(a) bears the burden of proving that the terms of employment are reasonable under the circumstances and that such employment is in the best interests of the estate. See, e.g., In re Thermadyne Holdings Corp., 283 B.R. 749, 756 (8th Cir. B.A.P. 2002) (affirming the bankruptcy court's refusal to allow a committee's employment of Houlihan, Lokey, Howard & Zukin Financial Advisors, Inc. under the proposed terms); In re Energy Partners, Ltd., No. 09-32957-H4-11, 2009 WL 2366104, at *9-22 (Bankr. S.D. Tex. July 28, 2009) (denying applications to employ two investment bankers, including Houlihan Lokey Howard & Zukin Capital, Inc.).

2. The Committee submits that the Debtors have not demonstrated that the terms of the Houlihan retention are reasonable or that Houlihan's retention is in the best interest of the Debtors' estates. The Debtors propose to pay Houlihan a Monthly Fee of $150,000, with 33% of the fourth through eighth Monthly Fees and 67% of all Monthly Fees after the eighth Monthly Fee being credited against the next Transaction Fee. Application ¶ 14(i). There is a minimum of three Monthly Fees, regardless of when the engagement is terminated. Id. Houlihan will not be required to keep time records to support its Monthly Fees (or its other fees) and the review of its Monthly Fees (and its other fees) will be limited to review under section 328(a) of the Bankruptcy Code and will not be subject to review for reasonableness under section 330 of the Bankruptcy Code. See Application Ex. B ¶¶ 5, 7.

3. In addition to the Monthly Fees, upon confirmation of any plan of reorganization,

Houlihan will be entitled to a Restructuring Transaction Fee in the amount of $1,125,000, less 50% of any Sale Transaction Fees payable, but the Restructuring Transaction Fee net of all applicable credits shall not be less than $500,000. Application ¶ 14(ii)(a). The Restructuring Transaction Fee will be payable to Houlihan irrespective of the nature or terms of a confirmed plan of reorganization and irrespective of Houlihan's involvement or role in the confirmation of such a plan.[4]

4. Assuming a short six-month engagement for Houlihan with confirmation of a plan of reorganization at the end of such six-month engagement and no Sale Transactions, Houlihan will be entitled to Monthly Fees and a Restructuring Transaction Fee in the aggregate amount of $1,876,500. Further, the Committee understands that the Debtors have not committed to allow Houlihan to run a marketing and sales process for all of the Debtors' assets. Without being permitted by the Debtors to run a marketing and sales process for all of the Debtors' assets, it is not clear what services Houlihan will be performing to earn such substantial fees. In light of the foregoing, the Committee submits that the Debtors have not demonstrated that the Monthly Fees and the Restructuring Transaction Fee are reasonable terms of Houlihan's employment. The Debtors' failure to demonstrate that such terms are reasonable is exacerbated by the fact that the Debtors are proposing that Houlihan not be required to keep time records to support its fees and that Houlihan's fees will be limited to review under section 328(a) of the Bankruptcy Code (and not section 330 of the Bankruptcy Code).

5. The Committee submits that the Debtors have not demonstrated that all of the other terms of the Houlihan engagement are reasonable. For instance, with respect to Hillside

[4] It is not clear to the Committee what work Houlihan will perform to truly earn the Restructuring Transaction Fee. Indeed, the Debtors have already retained Huron Consulting Services LLC as its financial advisor. It appears to the Committee that the Restructuring Transaction Fee tied to confirmation of any plan of reorganization (irrespective of its terms) is designed to ensure that Houlihan is paid a substantial fee even if there are no Sale Transactions.

and Northside, there is a minimum $500,000 Sale Transaction Fee for each facility sold, irrespective of the amount of consideration received. Application ¶ 14(ii)(b)(i). Similarly, the Debtors are proposing to pay Houlihan a Sale Transaction Fee of a minimum of $1,250,000 for a Sale Transaction involving any other meaningful asset,[5] irrespective of the amount of consideration received by the Debtors. Application ¶ 14(ii)(b)(ii).

6. Based on all of the foregoing, the Committee submits that the Debtors have not demonstrated that the terms of Houlihan's retention are reasonable or that the Houlihan retention is in the best interests of the Debtors' estates, and, therefore, the Application should be denied.

WHEREFORE, the Committee respectfully requests that the Application be denied and that the Court grant such other related relief as it deems appropriate.

Dated: August 6, 2009
New York, New York

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[5] The Committee submits that it is vague as to what is meant by "any other meaningful asset." The Application does not specifically define this concept.